No. 448

In the Supreme Court of the United States

OCTOBER TERM, 1944

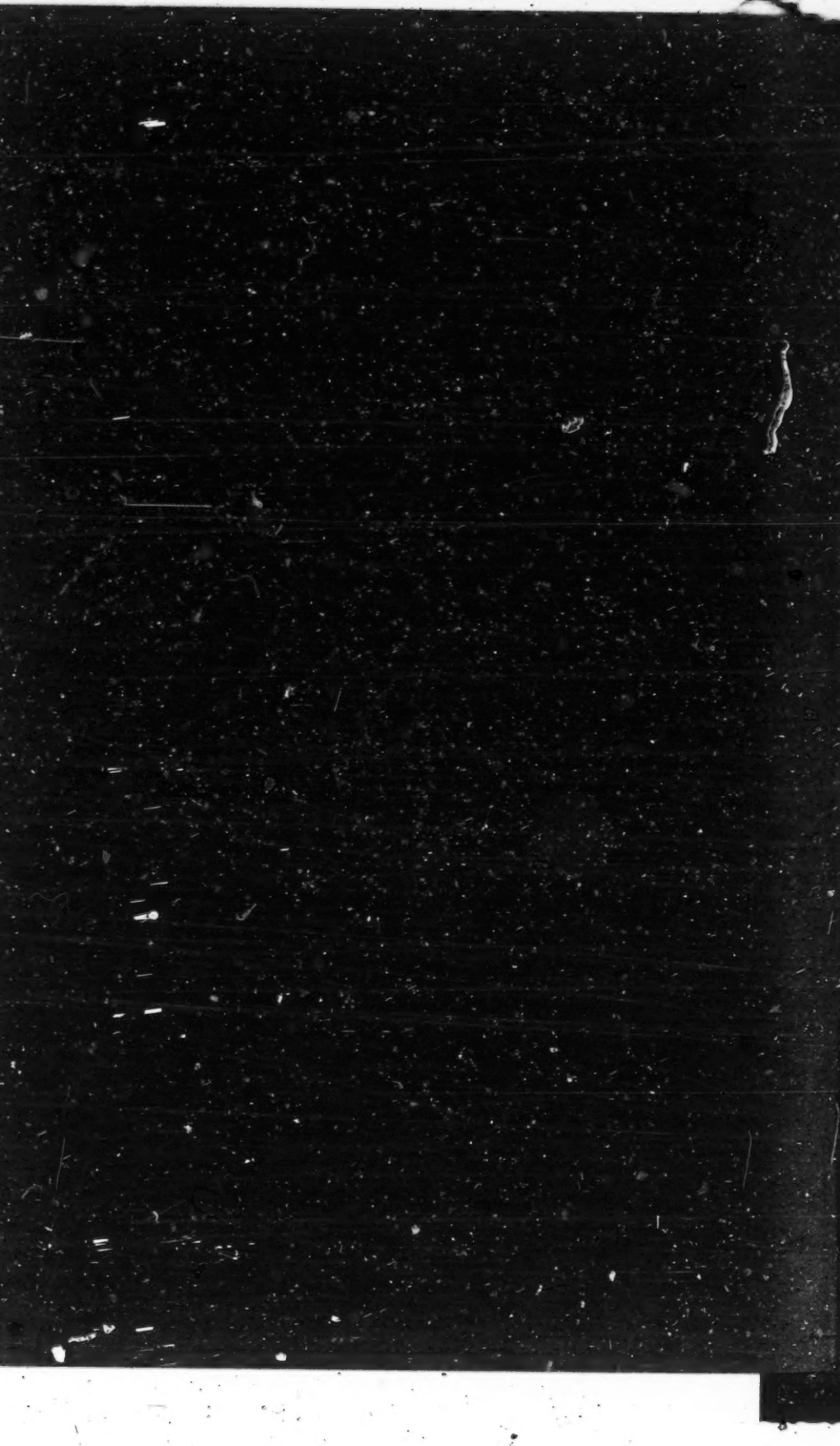
THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

vs.

HANCOCK TRUCK LINES, INC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

STATEMENT OF JURISDICTION



In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 795

HANCOCK TRUCK LINES, INC., PLAINTIFF

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

JURISDICTIONAL STATEMENT BY THE DEFENDANT-APPELLANTS UNDER RULE 12 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES

The defendant-appellants respectfully present the following statement disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the final judgment or decree in the above-entitled cause sought to be reviewed.

A. STATUTORY PROVISIONS

The statutory provisions believed to sustain the jurisdiction are:

U. S. C., Title 28, Section 47a (Act of March 3, 1911, c. 231, sec. 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913; c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March

3, 1911, c. 231, sec. 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, sec. 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, sec. 35, 31 Stat. 85; April 30, 1900, c. 339, sec. 86, 31 Stat. 158; March 3, 1909, c. 269, sec. 1, 35 Stat. 838; March 3, 1911, c. 231, secs. 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, sec. 2, 38 Stat. 804; February 13, 1925, c. 229, sec. 1, 43 Stat. 938).

B. DATE OF THE JUDGMENT OR DECREE SOUGHT TO BE REVIEWED AND THE DATE UPON WHICH THE APPLICATION FOR APPEAL WAS PRESENTED

The decree sought to be reviewed was entered on May 25, 1944. The petition for appeal was presented and allowed on 1944, and an assignment of errors filed.

C. NATURE OF CAUSE AND OF RULINGS BELOW

This is an appeal from a final decree of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, entered May 25, 1944, declaring illegal and void an order of the Interstate Commerce Commission made August 4, 1943, in *Globe Car-*

age Co., Inc. Common Carrier Application, No. MC-3339, as issued, enjoining the enforcement of an integral portion of said order, viz., the portion thereof requiring that the general commodities to be carried under authority of said order be such as are moving under bills of lading of a freight forwarder. The report made by the entire Commission on reconsideration, found upon substantial evidence that on the "grandfather" date, June 1, 1935, and continuously thereafter, the applicant carried only commodities which were moving upon bills or lading issued by freight forwarders. The Commission's order authorizes the applicant (to which the plaintiff is successor) to operate over certain routes described in said report (which are not in issue in this case) as a common carrier of general commodities which are moving under bills of lading of freight forwarders. A copy of the Commission's said report and order of August 4, 1943, is hereto attached.

The plaintiff as successor in interest to the applicant aforesaid in its complaint contended that since the Commission had found the applicant to be a common carrier it could not lawfully specify that the Globe could haul only commodities moving on bills of lading issued by forwarders even though the evidence showed that this was the only kind of operation the Globe carried on during the "grandfather" period. The Court rendered no opinion, but made findings of fact

and conclusions of law, a copy of which is attached hereto.

The questions presented by this appeal are substantial. They involve the interpretation and application of sections 5, 203, 204, 206, 208 of the Interstate Commerce Act, relating to the scope of the authority of the Commission to specify the character of common carrier operations carried on under a "grandfather" certificate. The action of the court appears contrary to the well-established principle that the operations authorized under a "grandfather" certificate should be such as to assure a substantial parity between applicant's future operations and those carried on bona fide by the applicant on the "grandfather" date and subsequently thereafter.

D. CASES SUSTAINING THE SUPREME COURT'S JURISDICTION ON APPEAL

United States v. *Carolina Freight Carriers Corp.*, 315 U. S. 475.

Alton Railroad Co. v. *United States*, 315 U. S. 15.

Noble v. *United States*, 319 U. S. 88.

Crescent Express Lines v. *United States*, 320 U. S. 401.

Board of Trade of Kansas City v. *United States*, 314 U. S. 534.

Union Stock Yard Co. v. *United States*, 308 U. S. 213.

United States v. *Pan American Petroleum Corp.*, 304 U. S. 156.

United States v. *American Sheet & Tin Plate Co.*, 301 U. S. 402.

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

Mississippi Valley Barge Co. v. *United States*, 292 U. S. 282.

Florida v. *United States*, 292 U. S. 1.

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420.

Assigned Car Cases, 274 U. S. 564.

Virginian Ry. v. *United States*, 272 U. S. 658.

Western Paper Makers' Chemical Co. v. *United States*, 271 U. S. 268.

Texas & Pacific Ry. Co. v. *United States*, 162 U. S. 197.

We, therefore, respectfully submit that the Supreme Court of the United States has jurisdiction of the appeal.

Dated ——, 1944.

CHARLES FAHY,
Solicitor General.

WENDELL BERGE,
Assistant Attorney General.

ROBERT L. PIERCE,
Special Assistant to the Attorney General.

EDWARD DUMBAULD,
Special Assistant to the Attorney General.

DANIEL W. KNOWLTON,
Chief Counsel.

NELSON THOMAS,
Attorney, Interstate Commerce Commission.

M-6456

INTERSTATE COMMERCE COMMISSION

No. MC-3339[1]

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

Decided August 4, 1943

On reconsideration, findings in prior reports, 41 M. C. C. 313 and 41 M. C. C. 303, modified. Applicants found entitled to authority to continue operations as common carriers by motor vehicle of general commodities with certain exceptions, between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, and Pennsylvania, over regular routes, in the transportation of commodities which are moving on bills of lading of freight forwarders. Issuance of certificates approved upon compliance by applicants with certain conditions, and applications in all other respects denied.

Appearances as shown in prior reports with addition of *Ezra Weiss* for applicant and *Robert J. McBride* and *J. Manley Head* for intervener in Nos. MC-3339 and MC-3340.

REPORT OF THE COMMISSION ON RECONSIDERATION

BY THE COMMISSION:

In the prior report in Nos. MC-3339 and MC-3340, 41 M. C. C. 313, division 5 found applicant, hereafter referred to as Globe, entitled to a

[1] This report also embraces No. MC-3340, Globe Cartage Company, Inc., Contract Carrier Application; No. MC-70614, The Barnett Trucking Company Common Carrier Application; and No. MC-23458, The Barnett Trucking Company Contract Carrier Application.

"grandfather" certificate authorizing continuance of operations as a common carrier by motor vehicle in interstate or foreign commerce, of general commodities, over specified regular routes, between, or from and to, specified points in the territory extending from St. Louis, Mo., on the west, to Buffalo, N. Y., and Pittsburgh, Pa., on the east, and from Louisville, Ky., on the south, to Chicago, Ill., on the north. The applications were in all other respects denied.

In the prior report in Nos. MC–70614 and MC–23458, *Barnett Trucking Co., Common Carrier Application,* 41 M. C. C. 303, division 5 found applicant, hereafter referred to as Barnett, entitled to a "grandfather" certificate authorizing continuance of operations as a common carrier by motor vehicle, in interstate or foreign commerce, of general commodities, over a specified route between Pittsburgh and Cincinnati, Ohio, serving Columbus and Dayton, Ohio, as intermediate points. The applications were in all other respects denied.

Intervener, The Regular Common Carrier Conference of The American Trucking Associations, Inc., and numerous rail and motor-carrier protestants filed petitions for reconsideration in Nos. MC–3339 and MC–3340. One of the petitions seeks oral argument. Applicant and a number of motor-carrier interveners filed petitions for reconsideration and oral argument in Nos. MC–70614 and MC–23458. All of the protestants and interveners urge that division 5 erred in failing "to restrict the authority" granted to applicants to traffic which is, at the time of transportation by them, in the primary custody of and moving

on bills of lading of freight forwarders, as defined in section 402 (a) (5) of part IV of the Interstate Commerce Act. Certain protestants in Nos. MC–3339 and MC–3340 urge that division 5 erred in failing "to restrict and limit" the authority granted to Globe to traffic which is in the primary custody of and moving on bills of lading of Universal Carloading & Distributing Company, and "to truckload movements only." Neither protestants nor interveners question applicants' rights to authority to continue operations as motor carriers of general commodities between the points and over the routes specified in the prior reports. In its petition, Barnett urges that it is entitled to authority to serve numerous points in Ohio, Pennsylvania, and New York in addition to those specified by division 5. Upon consideration of the petitions and of the records herein, we have vacated the orders entered by division 5 and reopened the proceedings for reconsideration. The questions raised in the petitions have been fully developed therein and on the records, and we have therefore denied the requests for oral argument.

Applicants have been engaged in bona fide operations, without interruption, since prior to June 1, 1935, transporting by motor vehicle for compensation, in interstate or foreign commerce, general commodities, except commodities in bulk and those of unusual length, height, or weight. During this entire period, Globe and Barnett have transported only traffic tendered to them by the Universal Carloading & Distributing Company and the National Carloading Corporation, re-

spectively. Each of the latter is a freight forwarder as defined in part IV of the act. In the prior reports herein, following our decisions in *Acme Fast Freight, Inc., Common Carrier Application,* 8 M. C. C. 211, and *Bleich Common Carrier Application,* 27 M. C. C. 9, division 5 found that applicants have been and are common carriers. None of the petitioners question these findings. Part IV of the act was added in 1942. In section 402 (a), it defines freight forwarders as follows:

> The term "freight forwarder" means any person which (otherwise than as a carrier subject to part I, II, or III of this Act) holds itself out to the general public to transport or provide transportation of property, or any class or classes of property, for compensation, in interstate commerce, and which, in the ordinary and usual course of its undertaking, (A) assembles and consolidates or provides for assembling and consolidating shipments of such property, and performs or provides for the performance of break-bulk and distributing operations with respect to such consolidated shipments, and (B) assumes responsibility for the transportation of such property from point of receipt to point of destination, and (C) utilizes, for the whole or any part of the transportation of such shipments, the services of a carrier or carriers subject to part I, II, or III of this Act.

This definition indicates quite plainly the character of service which freight forwarders perform, and it furnishes no basis for changing our conception of freight forwarders disclosed

in the many decisions, including those cited above, in which we considered the nature of their operations prior to the enactment of part IV. In this connection, it should be noted that section 418 of Part IV prohibits freight forwarders from employing or utilizing the instrumentalities of any carriers other than common carriers by motor vehicle, railroad, air, or water except in the performance within terminal areas of transfer, collection, or delivery services. The enactment of part IV of the act in no way affects the soundness of our decisions referred to above. We can perceive no reason for departing from the views expressed therein, and we accordingly affirm the findings of division 5 that applicants have been and are common carriers by motor vehicle.

Barnett contends that it should be granted authority to serve various points named in its application. It refers to the recommendation of the examiner that it be authorized to operate over a specified route between Pittsburgh and Cleveland, Ohio, serving Akron, Canton, and Youngstown, Ohio, as intermediate points. An examination of the record discloses that the only traffic transported by it between these points prior to June 1, 1935, was a single shipment, moved in March 1932 from Cleveland to Pittsburgh. There was no further operation between these points until some time in 1936. Its operations between other points and the operations conducted by Globe are accurately described in the prior reports. In our opinion, there is no basis for the granting of authority, under the "grandfather" clause of the act to either Barnett or Globe ex-

cept between the points and over the routes specified by division 5 in the prior reports.

We come now to the contentions of protestants and interveners that division 5 failed properly "to restrict the authority" granted to applicants. Division 5 found that we cannot, consistently with applicants' common-carrier status, restrict their service to particular shippers. We believe this a correct statement of the law. Section 203 (a) (14) of the act provides that the term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for compensation. A motor carrier whose service is restricted or limited to particular shippers of the ordinary kind obviously would not be a common carrier. Applicants are, however, as we have already determined, common carriers and are entitled to authority to continue operations as such. We are without power to restrict or limit their operations in a manner which would change their status from that of common carriers.

We are satisfied, however, that, in the circumstances here present, the relation between applicants and the freight forwarders should not be treated the same as that existing between an ordinary shipper and a motor common carrier. We pointed out in *Bleich Common Carrier Application, supra,* that the forwarder is not like an ordinary shipper who tenders its own goods to a carrier for transportation. The forwarder merely tenders for transportation freight belonging to the general public, which it has accepted and assembled as the result of an understanding

with many shippers or consignees that it will undertake to have the same transported to ultimate destinations. During the "grandfather" period, the freight forwarders have tendered to applicants, and applicants have transported, not traffic belonging to the forwarders but freight belonging to the general public, which the forwarders accepted and assembled as the result of the understanding with the shippers or consignees thereof that they would undertake to have the same transported. The facts which satisfy the requirement, insofar as applicants are concerned, that to be a common carrier there must be a holding out to transport for the general public are, first, that the forwarders dealt with the shipping public in general and did not limit their activities to selected shippers, and, second, that applicants transported traffic of the shipping public in general which was assembled by the forwarders as a result of the latter's undertaking to have the same transported. Under these circumstances, we think the freight forwarders must be treated, not as ordinary shippers, but as intermediary agencies through which applicants held themselves out to the general public to engage in the transportation of property by motor vehicle. To grant applicants authority to transport only traffic assembled by freight forwarders would enable them to continue all bona fide common-carrier operations in which they have been engaged during the "grandfather" period. They are entitled to no more or no less than this under the "grandfather" clause of section 206 (a) of the act. The issuance to them of certificates authorizing the transportaion of general commod-

ities (with the exceptions previously indicated) which are at the time moving on bills of lading of freight forwarders, would effectively accomplish this purpose.

Applicants' operations during the "grandfather" period may be likened to the operations of common carriers of special commodities. In cases too numerous to require citation, we have found that common carriers who have transported special commodities only are entitled, not to authority to transport general commodities, but to authority to continue transporting such special commodities. Common carriers of petroleum products, in bulk, in tank trucks, furnish an example. Obviously, only a small part of the general public ever has occasion to ship petroleum products, in bulk, in tank trucks. The service of such carriers is therefore in fact available only to a small part of the public. To "specify the service to be rendered" by such carriers in the certificates issued to them, in accordance with the provisions of section 208 (a) of the act, as the transportation of petroleum products, in bulk, in tank trucks, does not, however, constitute a restriction of their service to particular shippers. On the contrary, it constitutes a grant of authority to transport petroleum products, in bulk, in tank trucks, for anyone who offers such traffic for transportation.

Applicants have transported only traffic assembled by freight forwarders. Their service has therefore been rendered only to that part of the public which dealt with freight forwarders. To authorize them to continue the transportation of traffic assembled by freight forwarders would not

constitute a restriction of their service to particular shippers. On the contrary, their service would continue to be available to the public to the same extent as it has been during the "grandfather" period. However, to authorize applicants to transport traffic, other than that assembled by freight forwarders, would permit them to enlarge and expand their operations beyond the scope of the transportation businesses in which they have been engaged. The issuance of authority to engage in such enlarged and expanded operations would not be in harmony with the "grandfather" provisions of the act.

We find no merit in the contention of certain protestants that we should "restrict the authority" issued to Globe to "truckload movements only." Its holding out to the general public, in the manner described above, was not limited to the transportation of truckload shipments. In fact, a substantial part of the traffic handled by it consisted of small shipments made by the general public. We think it is entitled to authority to transport both truckload and less-than-truckload shipments. The same protestants urge that we should restrict Globe to the transportation of shipments moving on bills of lading of the single freight forwarder, Universal Carloading & Distributing Company, which has assembled all traffic which Globe has transported during the "grandfather" period. We think that such a limitation is not warranted but that Globe is entitled to authority to transport traffic moving on bills of lading of any freight forwarder.

On reconsideration, we find that applicants are entitled to certificates authorizing operations by

them as common carriers of general commodities (except commodities in bulk and those of unusual length, height, or weight) which are at the time moving on bills of lading of freight forwarders, between the points and in the manner described in the findings in the prior reports.

Upon compliance by applicants with the requirements of sections 215 and 217 of the act, and our rules and regulations thereunder, appropriate certificates will be issued. The applications in all other respects will be denied.

PATTERSON, *Commissioner*, dissenting:

The single issue here is whether a motor carrier which, during the "grandfather" period, and since, has rendered, pursuant to a contractual arrangement, a highly specialized transportation service exclusively for a single forwarder and which has not rendered or held itself out to render transportation service for any other person, can be held to have been operating as a common carrier by motor vehicle and to be entitled to a certificate as a common carrier under section 206 (a) of the act. The service rendered consists of terminal-to-terminal line-haul movement of trucks containing only such merchandise as is loaded therein by such forwarder.

A common carrier, both at common law and under the Interstate Commerce Act, is one that holds itself out to serve the "general public." As such, it is bound, within the scope of its operations, to transport for all impartially. It is the right of the public to use the carrier's facilities and to demand service of it which is the real criterion of whether a particular carrier is a common carrier: *Tap Line Cases*, 234 U. S. 1.

Neither the forwarder's patrons nor any portion of the public had or has any such right in the situation here under consideration, the motor-carrier service being available to a single forwarder only under a special contract with it.

It would seem that the bare statement of the situation ought to suffice conclusively to establish the contract-carrier status of such a motor carrier, and doubtless the majority would have so held if the transportation contract had been with a person other than a forwarder. But, confronted by the fact that by section 418 of the act a forwarder is now prohibited from utilizing the services of carriers other than common carriers, except in terminal areas, and that a holding that the considered motor-carrier operations were those of a motor contract carrier would have the effect of preventing the carrier from continuing operations as conducted by it in the past, the majority, in order to avoid such a result, have attempted to stretch and pull the generally recognized and accepted concept of what constitutes a common carrier in support of their conclusion that these operations were those of a common carrier. That conclusion is without support, in my opinion, in fact or in law.

The argument advanced amounts to this: That because a forwarder, in relation to its patrons who tender it small packages or lots of goods, serves the general public, any motor carrier whose services the forwarder may choose to utilize in carrying out its individual undertakings with its various patrons to have such goods transported *ipso facto* also serves the general public and be-

comes therefore a common carrier. The fallacy of this argument lies in the facts that in such a case the motor carrier has no contractual relation whatever with the forwarder's patrons, it undertakes to transport for the forwarder only and with respect to an entirely different unit of transportation, it has no liability to the forwarder's patrons but its liability is to the forwarder only, and the forwarder's relation to the transporting carrier has uniformly been held to be that of a shipper who must be treated by the carrier, if a common carrier, in all respects the same as any other shipper without regard to the forwarder's previous dealings with its patrons. *Interstate Commerce Commission* v. *Delaware, L. & W. R. Co.*, 220 U. S. 235; *Great Northern Ry. Co.* v. *O'Connor*, 232 U. S. 508; *Lehigh Valley R. Co.* v. *United States*, 243 U. S. 444. That the Congress, in subjecting forwarders to regulation under part IV of the Interstate Commerce Act, fully recognized this is definitely and clearly disclosed by the legislative history. That history shows that it was the purpose of that legislation to prevent a forwarder, as a shipper over the line of motor or other carriers, from securing transportation at a less price than common-carrier rates open and available to other shippers. Among other provisions, the provision of section 418 prohibiting the utilization by a forwarder, except in terminal areas, of other than common carriers was in furtherance of that purpose. The effect of the majority holding, and the reasoning in support thereof, is to render this prohibition meaningless by declaring that any motor carrier, even though admittedly a contract carrier

and authorized to operate as such, is automatically transformed into a common carrier if any persons, or the only person, engaging its services should happen to be, with or without such carrier's knowledge, a forwarder. And under the same reasoning, a motor carrier utilized by a forwarder in a terminal area would likewise *ipso facto* become a common carrier although section 418 recognizes that within such areas a forwarder may utilize either a contract or a common carrier. The Commission in the *Acme case*, 8 M. C. C. 211, recognized that forwarders employed motor contract carriers as well as motor common carriers. It is now held by the majority here that there can be no such thing as a motor contract carrier of forwarder shipments.

Failure to recognize the clear distinction between the dealings of the forwarder with its patrons and the entirely separate and distinct dealings of the forwarder with the motor carrier, and the attempt to combine the two to support the conclusion reached, serve only to produce a confusion of thought obscuring the fundamental issue.

Authority may not be granted under the "grandfather" clause which will permit a carrier to expand its operations beyond the scope of those conducted in the past. The majority concede that to restrict the authorized operations to service for a particular shipper or particular shippers (in this case a forwarder, for the motor carrier had no transportation dealings with any one else) would be inconsistent with common-carrier status and that a motor carrier, whose service is so limited, "obviously would not be a

common carrier." They seek to maintain the integrity of the finding that the operations were in fact those of a common carrier, and at the same time to "effectively accomplish the purpose" of restricting the operations to service for forwarders, by limiting the authority to the transportation of commodities "which are at the time moving on bills of lading of freight forwarders." Their argument is that this is a restriction as to the character of traffic and does not constitute a restriction of service to particular shippers. But, if we look back of the form of the restrictive words to what caused them and what they are intended to cause and do cause, it is obvious that they can have no other effect than to restrict the carrier's service to that for forwarders only, for the only traffic that can possibly be moving at the time on forwarder bills of lading is that tendered to the carrier by forwarders. Where common-carrier operations are lawfully limited to the handling of a particular class of traffic, any person having such traffic to transport is entitled to avail himself of the carrier's service at the published tariff rates named for such service. Here, however, the carrier's service and its published tariff rates consistent with the above restriction can be availed of only by forwarders—not by the forwarder's patrons or by any other person. Thus a shipper, such as Montgomery Ward or Sears Roebuck, desiring to make a shipment over the line of the motor carrier under the same conditions and at the same rate as applicable to a like shipment by a forwarder, would be prevented from doing so. It could obtain that particular service, if at all, only by employing the

forwarder and paying the forwarder's charges, and even then would have no right to demand of the forwarder that the goods be transported over the line of that particular carrier.

If such a motor carrier is a common carrier, it may not limit its service to a single forwarder, or even to forwarders, but must render like transportation service for others at like rates. It cannot legally enter into a contract with a forwarder for such transportation unless it makes, publishes, and applies for such service a rate open to all. *Kansas City Southern Ry. Co.* v. *Carl*, 227 U. S. 639; *Chicago & A. R. Co.* v. *Kirby*, 225 U. S. 155.

If the decision of the majority is sound in principle, then particular forwarders or groups of forwarders are free to utilize particular "common carriers" whose loaded-truck facilities are devoted exclusively to such forwarders. By reason of the ensuing large and steady volume of traffic, such carriers would presumably be in a position profitably to accord lower rates than common carriers serving shippers generally could afford to maintain. The latter carriers would thus be prevented from handling such traffic at all, either directly at less-than-carload or less-than-truckload rates or for the forwarder at their carload or truckload rates, and the principal occasion for operations of a forwarder, namely, to supplement and coordinate the services offered by regular common carriers by consolidating into carload or truckload lots articles of merchandise which such common carriers would otherwise be called upon to transport in less-than-carload or less-than-truckload lots, would cease to exist.

Considerations of expediency, or of supposed hardship that might result from a finding that the operations were those of a contract carrier do not justify declaring a contract carrier to be a common carrier. If applicants desire authority to operate as common carriers in order that they may continue to serve forwarders as in the past, and, as required of common carriers, to make their services available also to others, they should file an appropriate application.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 4th day of August, A. D. 1943.

No. MC–3339

GLOBE CARTAGE COMPANY, INC., COMMON CARRIER APPLICATION

No. MC–3340

GLOBE CARTAGE COMPANY, INC., CONTRACT CARRIER APPLICATION

No. MC–70614

THE BARNETT TTUCKING COMPANY COMMON CARRIER APPLICATION

No. MC–23458

THE BARNETT TRUCKING COMPANY CONTRACT CARRIER APPLICATION

It appearing, That on October 7, 1942, the Commission, division 5, entered its reports and orders in the above-entitled matters granting the

applications in certain respects, and denying the applications in all other respects;

It further appearing, That petition for reconsideration and oral argument have been filed by applicant in Nos. MC–70614 and MC–23458 and by various protestants and interveners in all of the above-entitled proceedings:

It is ordered, Upon further consideration of the records herein, and of the said petitions, that the proceedings be, and they are hereby, reopened for reconsideration on the records as made; that the said orders of October 7, 1942, be, and they are hereby, vacated and set aside; and that the said petitions be, and they are hereby, in all other respects denied.

It further appearing, That full investigation and reconsideration of the matters and things involved in these proceedings have been made, and that the Commission, on the date hereof, has made and filed its report on reconsideration herein, containing its findings of fact and conclusions thereon, which report and said reports of October 7, 1942, are hereby referred to and made a part hereof:

It is ordered, That the said applications, except to the extent that certificates are granted in the said report on reconsideration, be, and they are hereby, denied, effective October 6, 1943.

By the Commission.

[SEAL] W. P. BARTEL,
Secretary.

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Civil Action No. 795

HANCOCK TRUCK LINES, INC.

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The three-judge Court herein having heretofore heard the evidence, the argument of counsel, and being duly advised in the premises, now finds the facts specially herein, and states separately its conclusions of law thereon.

The facts are found to be as follows:

Finding No. 1

The plaintiff is a corporation duly organized and existing under the laws of the State of Indiana, and has been such since 1933, with its principal office and place of business in the City of Evansville, Vanderburgh County, Indiana, and with an office in the City of Indianapolis, in Marion County, Indiana, and is a citizen and resident of the District Court for the Southern District of Indiana.

Finding No. 2

Plaintiff seeks to enjoin, set aside, annul, and restrain the enforcement of part of a certain order of the Interstate Commerce Commission, being Order No. MC–3339, entitled Globe Cartage Company, Inc., Common Carrier Application, which was approved on the 4th day of August, 1943, and later modified to become effective on the 31st day of March, 1944, and which proceeding is now designated by the Commission as No. MC–25567 (Sub. No. 8), Hancock Truck Lines, Inc., Successor to Globe Cartage Company, Inc.; its action arises under the Fifth Amendment to the Constitution of the United States, and under Section 205 (h) of the Motor Carrier Act of 1935, now Section 205 (g) of Part II of the Interstate Commerce Act (U. S. Code, Sup. 1, Title 49, Sec. 305 (h)), and under the Acts of Congress, Code of Laws of the United States, Title 28, Sections 41 (28), 32 to 48, inclusive.

Finding No. 3

Throughout the period of plaintiff's corporate existence, it has been, and is now, a common carrier by motor vehicles, holding itself out to the general public to engage in the transportation by motor vehicles in interstate and foreign commerce of general commodities, with certain usual exceptions, for compensation, and has been, and is now, the holder of certain certificates of public

convenience and necessity issued to it by the defendant, Interstate Commerce Commission, different from the certificate and order of the Commission complained of in the complaint.

Finding No. 4

On or about the 29th day of January, 1936, an Indiana corporation known as Globe Cartage Company, Inc., having its general office and principal place of business in Indianapolis, Marion County, Indiana, filed its written application with the defendant, Interstate Commerce Commission, under the grandfather clause of Section 306, Title 49 U. S. C. A., duly alleging that it was in fact in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the routes and within the territory for which such application was so made by it, and had so operated since that time down to the filing of its said application, such application and proceedings being entitled "Globe Cartage Company, Inc., Common Carrier Application," and bearing No. MC–3339, and wherein it requested said Commission to give and grant unto it a certificate of convenience and necessity, under and pursuant to said grandfather clause, such application for such certificate having been made by said corporation to the Commission in all respects as provided for in Paragraph (b) of Section 206, of Part II of the Interstate Commerce Act afore-

said, and within 120 days after October 1, 1935; proceedings were had in relation to such application which resulted in a reference of said application to an examiner by said Commission; thereafter, evidence was heard by said Examiner, report was made to the Commission, and under date of October 7, 1942, Division 5 of the defendant, Interstate Commerce Commission, decided that said applicant was entitled to continue operations as a common carrier by motor vehicle of general commodities between certain points in Illinois, Indiana, Kentucky, Michigan, Missouri, New York, Ohio, and Pennsylvania, over regular routes by reason of having been so engaged on June 1, 1935, and continuously since, a copy of the findings of fact, and the decision of said Division 5, dated October 7, 1942, aforesaid, being filed with the complaint, marked Exhibit "A," and made a part thereof, which Exhibit is adopted as a part of these findings.

Finding No. 5

Said Division No. 5 of the Interstate Commerce Commission made and adopted its special findings of fact, wherein, among other things, it was found by said Division 5 that on June 1, 1935, said Globe Cartage Company, Inc., was, and continuously since had been, in bona fide operation as a common carrier by motor vehicle, in interstate and foreign commerce, over certain of the

routes described in said application, particularly described in paragraph 6 of plaintiff's complaint.

Finding No. 6

Said Division No. 5 further found in said findings of fact that it could not, consistently with said applicant's common carrier status, restrict its services to particular shippers, namely, freight forwarders, and that to restrict the traffic which it might transport to shipments made by freight forwarders would, in effect and result, be a restriction of applicant's services to such forwarders.

Finding No. 7

Said Division 5 thereupon found and concluded that upon compliance by applicant with the requirements of Sections 215 and 217 of said Act, and of the Rules and Regulations of said Commission thereunder, that an appropriate certificate in conformity with such findings would be issued to it, all as is more particularly set out in said Exhibit A aforesaid, in Appendix B thereof.

Finding No. 8

Thereafter, further proceedings were had in relation to said application, and the defendant, Interstate Commerce Commission, upon petitions filed by protestants for reconsideration of such findings and conclusions, vacated and set aside the order entered by Division 5, and upon such

reconsideration the Commission entered its report and order showing the same to have been decided as of August 4, 1943, and a copy of the Commission's findings, conclusions, and order of August 4, 1943, is attached to the complaint, marked "Exhibit B," and made a part thereof, which Exhibit is adopted as a part of these findings.

Finding No. 9

The Commission in all respects confirmed the findings of fact of said Division No. 5 to the effect that said applicant, Globe Cartage Company, Inc., had been engaged in bona fide operations, without interruption, since prior to June 1, 1935, transporting by motor vehicle for compensation, in interstate or foreign commerce, general commodities (i. e., freight and commodities of every class, type, and character), except commodities in bulk and those of unusual length, height, or weight; it further found as a fact that said applicant was a common carrier by motor vehicle, and further confirmed and ratified the finding of Division 5 that the Commission could not, consistently with applicant's common carrier status, restrict its services to particular shippers; said Commission further found as a fact that said applicant, Globe Cartage Company, Inc., was a common carrier and entitled to authority to continue operations as such, and that said Commission was without power to restrict or

limit its operations in a manner which would change it status from that of a common carrier.

Finding No. 10

That contrary to the findings above set forth, the Commission did place certain restrictions in said order of August 4, 1943, limiting the transportation to be performed in the future by the plaintiff to those general commodities which are at the time moving on bills of lading of freight forwarders, and specific reference is made to Sheet 5 of Exhibit B, from which the following is set forth:

> On reconsideration, we find that applicants are entitled to certificates authorizing operations by them as common carriers of general commodities (except commodities in bulk and those of unusual length, height or weight) which are at the time moving on bills of lading of freight forwarders, between the points and in the manner described in the findings in the prior reports.

Finding No. 11

A petition to modify the effective date of said order was filed, and on February 21, 1944, the Commission made the effective date thereof March 31, 1944, and then by order dated the 13th day of March, 1944, denied the petition to modify the effective date of said order beyond March 31,

1944, and said order was a final order when this action was commenced.

Finding No. 12

While said proceedings of Globe Cartage Company, Inc., were pending before said Commission in said Cause No. MC–3339, plaintiff acquired all of the common carrier operating rights of the said Globe Cartage Company, Inc., and that such transaction was with the Commission's approval by formal report and order, dated as of May 16, 1942, in proceeding (docket) numbered MC–F 1743, and such operating rights were duly and legally acquired by, and transferred to this plaintiff, Hancock Truck Lines, Inc., and it is now the successor in interest of all the rights of said Globe Cartage Company, Inc., and ever since the consummation of the transaction shortly after the last named date, plaintiff has been, and is now, the sole owner of all of said rights of Globe Cartage Company, Inc., and of all rights, privileges and grants to which Globe Cartage Company, Inc., would have been entitled to, under and pursuant to the proceedings in its said application for said certificate in Cause No. MC–3339 aforesaid, and plaintiff is therefore now interested in said proceeding, and in said final order, and will be the sole owner of such certificate as is issued thereunder.

Exhibit F in evidence is a correct copy of the findings of fact, report and order of the Com-

mission of May 16, 1942, aforesaid, and such Exhibit is adopted as a part of these findings.

Finding No. 13

The defendants, and each thereof, is threatening to enforce that part of the order thus complained of in the complaint, and unless they are enjoined by this Court they will enforce said order; plaintiff has exhausted all of its remedies before the defendant, Interstate Commerce Commission.

Finding No. 14

The plaintiff, as such common carrier of property by motor vehicles, has, and does provide safe and adequate service, equipment, and facilities for the transportation of property consisting of general commodities in interstate and foreign commerce, and established, observed and enforced just and reasonable rates, charges and classifications, and just and reasonable regulations and practices relating thereto and to the manner and method of presenting, marking, packing and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property in interstate and foreign commerce, and has fully complied with all the rules and regulations of the Commission in relation thereto insofar as they are in effect at this time, and as such common carrier it is prohibited by law from

making, giving or causing any undue or unreasonable preference or advantage to any particular person, port, gateway, locality, district territory, or description of traffic, in any respect whatsoever, and as a common carrier it is bound by law to receive and transport such general commodities as are offered to it for transportation by either the owners or their agents for transportation, and to carry them on the routes which it operates.

Finding No. 15

The order of the Commission dated May 16, 1942, referred to in Finding No. 12, was made in said proceeding so numbered M. C. F. 1743, pursuant to a joint application filed before the Commission by Hancock Trunk Lines, Incorporated, and Globe Cartage Company, for purchase by the former of the operating rights of the latter; a hearing was had by Division 4 and a finding made by the Commission authorizing such purchase; when the application was filed, Hancock had only paid Globe $100, but had agreed to pay an additional $2,500 upon approval of such transaction by the Commission, $2,500 upon final approval by the last concerned State regulatory authorities, and $4,900 within ten days thereafter. The Commission found that approximately 65% of Globe's traffic consisted of business handled for Universal Carloading and Distributing Company, a freight forwarding company, and as a result of

handling such business the flow of traffic for Globe was unbalanced, necessitating the dead-heading of equipment, especially from St. Louis east; it found, on the other hand, that Hancock enjoyed heavier traffic east out of St. Louis than in the reverse direction; the Commission found that, with some exceptions not material herein, Hancock's regular route operations were over routes duplicated by those claimed by Globe, the latter's operations, however, being considerably more extensive; both carriers were found to be serving Louisville, Evansville, Indianapolis, Vincennes, Terre Haute, Detroit, St. Louis, and Chicago, among other points, and maintained duplicate terminal facilities at a number of such common points; Globe did not believe that it would be justified in expending additional funds to develop a better balanced operation, and, as its functions and facilities substantially duplicated those of Hancock, the desired result could be accomplished through the unification of the operations of Hancock; the Commission found that such unification would result in better balanced lading between the common points served, principally between Louisville and Chicago, Chicago and St. Louis, and St. Louis and Indianapolis, would provide Hancock with shorter routes; Hancock was found to have the necessary organization to conduct the additional operations and would meet any increased equipment demands either by leasing or purchasing the same; the Commission

found that savings through consolidation of overlapping functions, including terminal and pick-up and delivery facilities, application of Hancock's lower insurance rates, reduction in truck miles operated empty, and through increasing the use factor of vehicles operated by transporting heavier loads, were estimated to be in excess of $50,000 annually, approximately $20,000 of which represented the estimated cost to Globe, if it remained in operation in developing additional business to balance its present lading; the Commission found that the proposed unification was in line with its purpose of encouraging corporate simplification in the interest of economical and efficient transportation.

The Commission further found that the purchase of Hancock of the common carrier operating rights of Globe, upon the terms and conditions set out in the order, which terms and conditions were found by the Commission to be just and reasonable, was a transaction within the scope of Section 5 (2) (a) and would be consistent with the public interest and pending determination of Globe's "grandfather" applications in Nos. MC–3339 and MC–3340, Hancock should conduct the common carrier operations lawfully conducted under the "grandfather" clause pursuant to those applications, and Hancock would be entitled to a certificate covering any "grandfather" common carrier rights which might be confirmed as a result of those applica-

tions, which rights the Commission by its said order of May 16, 1942, authorized to be unified with rights otherwise confirmed in Hancock, with duplications eliminated; an order was thereupon entered by the Commission conforming to such findings, and such order is in plaintiff's Exhibit F.

Finding No. 16

Following the findings and order of the Commission set out in Finding No. 15, Hancock Truck Lines, Incorporated, in reliance upon such findings and order, paid to Globe said $9,900, the balance of the purchase price for such common carrier operating rights.

Finding No. 17

In further reliance upon said findings and order of May 16, 1942, the plaintiff completely unified the common carrier operating rights of Globe which were to be confirmed by the Commission as a result of its grandfather applications aforesaid, with rights otherwise confirmed in Hancock, with duplications eliminated, which rights at that time were the common carrier rights of Hancock pursuant to its certificates of public convenience and necessity theretofore granted to it by the Commission over the routes aforesaid; plaintiff thereafter continued to operate under said order of unification, and unified the common carrier rights of both of said com-

panies as authorized by the Commission, and has continued such unified operation up to this time, to the extent and in the manner as set out in paragraph 18 of its complaint.

Finding No. 18

If that part of the order complained of by the plaintiff is enforced, all of the business which plaintiff has built up under said unification order of May 16, 1942, will be destroyed, and plaintiff will be put back to the position which Globe was in when said order was entered, namely, maintaining duplications in terminals and facilities, handling an unbalanced lading, dead-heading of equipment, its savings in excess of $50,000 per year through consolidation of overlapping functions, including terminal and pick-up delivery facilities, reduction in truck miles operated, and the use of vehicles operated by transporting heavier loads, will all be lost to it, and it will suffer and sustain immediate and irreparable injury, loss and damage on account of the enforcement of the part of said order complained of herein.

Finding No. 19

The Commission has made no finding of fact that the restriction complained of in the complaint is a reasonable term, condition or limitation required by the public convenience and

necessity; nor has it found as a fact that it will be consistent with the public interest to place such restriction in said order; nor has it found that good cause exists for changing said order of May 16, 1942.

That part of the order complained of herein is not sustained or justified by any fact found by the Commission, and there is no rational basis for its support; said part of said order is now found to be discriminatory against the plaintiff, is an arbitrary, unreasonable and capricious restriction upon the rights, duties and privileges of plaintiff as a common carrier of general commodities by motor vehicle for compensation, will deprive plaintiff of its rights and property without due process of law, and is illegal and void.

Dated at Indianapolis, Indiana, this 25th day of May, 1944.

[s] SHERMAN MINTON,
Circuit Judge.

[s] ROBERT C. BALTZELL,
District Judge.

[s] LUTHER M. SWYGERT,
District Judge.

CONCLUSIONS OF LAW

Upon the foregoing facts, the Court concludes the law to be as follows:

One

The Court has jurisdiction of the subject matter, and of the parties, in this cause of action.

Two

That part of the order complained of in the complaint which limits plaintiff's operations as a common carrier of general commodities to those *"which are at the time moving on bills of lading of freight forwarders"* is illegal and void, and the defendants should be permanently enjoined from enforcing the same.

Dated at Indianapolis, Indiana, this 25th day of May, 1944.

[s] SHERMAN MINTON,
Circuit Judge.

[s] ROBERT C. BALTZELL,
District Judge.

[s] LUTHER M. SWYGERT,
District Judge.

In the District Court of the United States for the Southern District of Indiana, Indianapolis Division

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Civil Cause No. 795

HANCOCK TRUCK LINES, INC., PLAINTIFF

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS

INJUNCTION GRANTED

This cause coming on now to be finally heard by the Court, and the parties appearing by their respective attorneys, and the Court having heard the evidence and the argument of counsel and being sufficiently advised in the premises, now, pursuant to Rule 52 of the Rules of Civil Procedure, signs and files herein its special findings of fact and states its conclusions of law thereon, which said special findings of fact and conclusions of law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

Upon the foregoing Special Findings of Fact and Conclusions of Law, it is

Ordered, adjudged, and decreed:

1. That part of the order made and entered by the defendant, Interstate Commerce Commission,

as of August 4, 1943, in Cause No. MC-3339, Globe Cartage Company, Inc., Common Carrier Application, complained of in the complaint, which confines authorized operations by Hancock Truck Lines, Inc., successor in interest of Globe Cartage Company, Inc., as a common carrier of general commodities, to general commodities, "which are at the time moving on bills of lading of freight forwarders," is illegal and void, and the defendants, United States and The Interstate Commerce Commission, and their officers, agents, servants, employees, and attorneys, and all those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, should be, and they are hereby permanently enjoined and prohibited from enforcing or attempting to enforce the same in any manner.

Dated this 25th day of May 1944.

[s] SHERMAN MINTON,
Judge, United States Circuit Court of Appeals.

[s] ROBERT C. BALTZELL,
Judge, United States District Court.

[s] LUTHER M. SWYGERT,
Judge, United States District Court.

U. S. GOVERNMENT PRINTING OFFICE: 1944